

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

DePuy Mitek, Inc.)	
a Massachusetts Corporation)	
)	
Plaintiff.)	
)	
v.)	Civil No. 04-12457 PBS
)	
Arthrex, Inc.)	
a Delaware Corporation)	
)	
Defendant.)	

**Plaintiff DePuy Mitek's Motion To Strike
Hearsay Exhibit And All Citation And Commentary Thereto**

Plaintiff DePuy Mitek moves to strike Exhibit 3 to Defendants Arthrex, Inc.'s And Pearsall's Ltd.'s Motion For Summary Judgment -- a brochure entitled "Spectra Extended Chain Polyethylene Fibers" -- as well as any citation to, or other use of, that brochure. In particular, the citations to, and discussion of, the brochure should be stricken from each of the following pleadings: (a) that Motion For Summary Judgment; (b) Defendants Arthrex, Inc.'s And Pearsall's Ltd.'s Concise Statement Of Material Facts In Support Of Their Motion For Summary Judgment; and (c) Defendants Arthrex, Inc.'s And Pearsall's Ltd.'s Opening Brief On Claim Construction (which also includes the brochure as Exhibit 3).

Pursuant to FED. R. EVID. 802, the brochure is inadmissible hearsay. Its use in any manner is legally improper and should be precluded. A (Proposed) Order to that effect, specifically addressing various specific improper uses of the hearsay evidence, accompanies this motion.

Dated: September 1, 2006

DEPUY MITEK, INC.,
By its attorneys,

/s/ Erich M. Falke

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CERTIFICATE OF SERVICE

I certify that I am counsel for DePuy Mitek, Inc. and that a true and correct copy of:

Plaintiff DePuy Mitek's Motion To Strike Hearsay Exhibit And All Citation And Commentary Thereto

was served on counsel for Defendants Arthrex, Inc. and Pearsalls Ltd. on this date via the Court's e-mail notification with the following recipients being listed as filing users for Defendants:

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Dated: September 1, 2006

/s/ Erich M. Falke

Erich M. Falke

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[Proposed] Order Granting Plaintiff DePuy Mitek's

Motion To Strike Hearsay Exhibit And All Citation And Commentary Thereto

AND NOW, this ____ day of _____, 2006, upon consideration of the DePuy Mitek's Motion To Strike Hearsay Exhibit And All Citation And Commentary Thereto, as well as the pleadings and arguments submitted thereon,

It is hereby ORDERED that the Motion is GRANTED.

All use of the brochure attached as Exhibit 3 to Defendants Arthrex, Inc.'s And Pearsall's Ltd.'s Motion For Summary Judgment is stricken. In particular, each of the following is stricken:

1. Exhibit 3 to Defendants Arthrex, Inc.'s And Pearsall's Ltd.'s Motion For Summary Judgment;
2. Exhibit 3 to Defendants Arthrex, Inc.'s And Pearsall's Ltd.'s Opening Brief On Claim Construction;

3. Statements Of Fact Nos. 9, 48-49, and 51-53 contained in Defendants Arthrex, Inc.'s And Pearsall's Ltd.'s Concise Statement Of Material Facts In Support Of Their Motion For Summary Judgment;

4. The material for which the brochure is cited as support on page 1 of Defendants Arthrex, Inc.'s And Pearsall's Ltd.'s Motion For Summary Judgment; and

5. The material for which the brochure is cited as support on pages 1 and 14 of Defendants Arthrex, Inc.'s And Pearsall's Ltd.'s Opening Brief On Claim Construction.

Date:_____

United States District Judge Saris